

Bozeman, Melissa A.

From: Techentin, Jeffrey <Jtechentin@apslaw.com>
Sent: Monday, December 20, 2021 9:10 AM
To: Bozeman, Melissa A.
Cc: McKittrick, Juliana
Subject: RE: AnywhereCommerce, Inc. and BBPOS, Ltd. v. Ingenico, et al.
Attachments: BBPOS_1612262 (2017 all).xlsx

Categories: Attachments

[CAUTION - EXTERNAL SENDER]

Hi Melissa,

Further to our meet-and-confer on Friday, I've attached a sample spreadsheet that contains sales information broken down by product (BBPOS_1612262 (2017 all).xlsx). We have located equivalent data for 2015 (BBPOS_1589783), 2016 (BBPOS_1612263) and part of 2018 (BBPOS_1614816) but cannot find such information for 2010-2014 or anything post-November 2018. Please advise if there are documents from those time periods that we haven't located, or, if not, let me know if/when you can produce that information.

Thanks,

Jeff

JEFFREY K. TECHENTIN

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From: Bozeman, Melissa A. <Melissa.Bozeman@KutakRock.com>
Sent: Thursday, December 16, 2021 11:38 AM
To: Techentin, Jeffrey <Jtechentin@apslaw.com>
Cc: Griffin, Oliver D. <Oliver.Griffin@KutakRock.com>; Nemcik, Robin M. <Robin.Nemcik@KutakRock.com>; Kessler, Peter N. <Peter.Kessler@KutakRock.com>; Carmeli, Daniel <Daniel.Carmeli@KutakRock.com>; Benjamin, Nicole <Nbenjamin@apslaw.com>; Tarantino, John <jtarantino@apslaw.com>; Forman, Anna S. <Anna.Forman@KutakRock.com>
Subject: RE: AnywhereCommerce, Inc. and BBPOS, Ltd. v. Ingenico, et al.

8:30 AM works for me. I'm also available tomorrow any time after 3:00 PM.

D (215) 717-8489 | C (215) 353-8484 | F (215) 981-0719

Melissa.Bozeman@KutakRock.com

From: Techentin, Jeffrey <Jtechentin@apslaw.com>

Sent: Thursday, December 16, 2021 11:33 AM

To: Bozeman, Melissa A. <Melissa.Bozeman@KutakRock.com>

Cc: Griffin, Oliver D. <Oliver.Griffin@KutakRock.com>; Nemcik, Robin M. <Robin.Nemcik@KutakRock.com>; Kessler, Peter N. <Peter.Kessler@KutakRock.com>; Carmeli, Daniel <Daniel.Carmeli@KutakRock.com>; Benjamin, Nicole <Nbenjamin@apslaw.com>; Tarantino, John <itarantino@apslaw.com>; Forman, Anna S.

<Anna.Forman@KutakRock.com>

Subject: RE: AnywhereCommerce, Inc. and BBPOS, Ltd. v. Ingenico, et al.

[CAUTION - EXTERNAL SENDER]

Tomorrow morning I'm only available until 9am, so if that works for you, let's schedule it.

Jeff

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From: Bozeman, Melissa A. <Melissa.Bozeman@KutakRock.com>

Sent: Thursday, December 16, 2021 11:30 AM

To: Techentin, Jeffrey <Jtechentin@apslaw.com>

Cc: Griffin, Oliver D. <Oliver.Griffin@KutakRock.com>; Nemcik, Robin M. <Robin.Nemcik@KutakRock.com>; Kessler, Peter N. <Peter.Kessler@KutakRock.com>; Carmeli, Daniel <Daniel.Carmeli@KutakRock.com>; Benjamin, Nicole <Nbenjamin@apslaw.com>; Tarantino, John <itarantino@apslaw.com>; Forman, Anna S.

<Anna.Forman@KutakRock.com>

Subject: RE: AnywhereCommerce, Inc. and BBPOS, Ltd. v. Ingenico, et al.

I am tied up this afternoon. However, I am available Friday morning (preferably before 11:00 AM EST). Does that work for you?

Melissa A. Bozeman | Partner | Kutak Rock LLP

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Melissa.Bozeman@KutakRock.com

From: Techentin, Jeffrey <Jtechentin@apslaw.com>

Sent: Wednesday, December 15, 2021 5:50 PM

To: Bozeman, Melissa A. <Melissa.Bozeman@KutakRock.com>

Cc: Griffin, Oliver D. <Oliver.Griffin@KutakRock.com>; Nemcik, Robin M. <Robin.Nemcik@KutakRock.com>; Kessler,

Peter N. <Peter.Kessler@KutakRock.com>; Carmeli, Daniel <Daniel.Carmeli@KutakRock.com>; Benjamin, Nicole <Nbenjamin@apslaw.com>; Tarantino, John <itarantino@apslaw.com>; Forman, Anna S. <Anna.Forman@KutakRock.com>
Subject: RE: AnywhereCommerce, Inc. and BBPOS, Ltd. v. Ingenico, et al.

[CAUTION - EXTERNAL SENDER]

Good evening Melissa,

Please advise your availability to meet and confer on these topics tomorrow or Friday.

Jeff

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From: Techentin, Jeffrey <Jtechentin@apslaw.com>

Sent: Tuesday, December 14, 2021 2:41 PM

To: Bozeman, Melissa A. <Melissa.Bozeman@KutakRock.com>

Cc: Griffin, Oliver D. <Oliver.Griffin@KutakRock.com>; Nemcik, Robin M. <Robin.Nemcik@KutakRock.com>; Kessler, Peter N. <Peter.Kessler@KutakRock.com>; Carmeli, Daniel <Daniel.Carmeli@KutakRock.com>; Benjamin, Nicole <Nbenjamin@apslaw.com>; Tarantino, John <itarantino@apslaw.com>; Forman, Anna S. <Anna.Forman@KutakRock.com>

Subject: RE: AnywhereCommerce, Inc. and BBPOS, Ltd. v. Ingenico, et al.

Thank you for the response, Melissa. I wouldn't agree that this presents a myriad of issues, however.

Jeff

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you have received this e-mail message in error, or are not the named recipient(s), please immediately notify Jtecentin@apslaw.com and delete this message from your computer and destroy all copies. Thank you.

From: Bozeman, Melissa A. <Melissa.Bozeman@KutakRock.com>
Sent: Tuesday, December 14, 2021 2:26 PM
To: Techentin, Jeffrey <Jtecentin@apslaw.com>
Cc: Griffin, Oliver D. <Oliver.Griffin@KutakRock.com>; Nemcik, Robin M. <Robin.Nemcik@KutakRock.com>; Kessler, Peter N. <Peter.Kessler@KutakRock.com>; Carmeli, Daniel <Daniel.Carmeli@KutakRock.com>; Benjamin, Nicole <Nbenjamin@apslaw.com>; Tarantino, John <jtarantino@apslaw.com>; Forman, Anna S. <Anna.Forman@KutakRock.com>
Subject: RE: AnywhereCommerce, Inc. and BBPOS, Ltd. v. Ingenico, et al.

Jeff:

You sent this email about an hour ago – and I am not in a position to be able to respond to the myriad of discovery issues that you've raised below by the end of TODAY, as you've requested. In particular, I expect that it will take me some time to drill down on the scope of financials produced and review the privilege matters that you've flagged below.

That said, I have time tomorrow to review your email in depth, and will have our substantive response as to each of the below matters/requests to you no later than Thursday.

Thanks,

Melissa

Melissa A. Bozeman | Partner | Kutak Rock LLP
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Melissa.Bozeman@KutakRock.com

From: Techentin, Jeffrey <Jtecentin@apslaw.com>
Sent: Tuesday, December 14, 2021 1:21 PM
To: Bozeman, Melissa A. <Melissa.Bozeman@KutakRock.com>
Cc: Griffin, Oliver D. <Oliver.Griffin@KutakRock.com>; Nemcik, Robin M. <Robin.Nemcik@KutakRock.com>; Kessler, Peter N. <Peter.Kessler@KutakRock.com>; Carmeli, Daniel <Daniel.Carmeli@KutakRock.com>; Benjamin, Nicole <Nbenjamin@apslaw.com>; Tarantino, John <jtarantino@apslaw.com>
Subject: AnywhereCommerce, Inc. and BBPOS, Ltd. v. Ingenico, et al.

[CAUTION - EXTERNAL SENDER]

Counsel:

The purpose of this email is to request that you immediately commit to the supplementation of plaintiffs' document production in light of testimony obtained during the deposition of the plaintiffs and individuals associated with the plaintiffs, including Mr. Lo's 30(b)(6) testimony on Friday clarifying that BBPOS agrees that the BBPOS/Roam Data license agreement remains in effect. Specifically, we ask that the Plaintiffs provide the following documents:

1. From BBPOS:
 - a. Sales and profit records concerning all magnetic stripe and/or EMV and/or Bluetooth card readers though the present sufficient to show the date, customer, price, gross, and net margins for each such sale (see, e.g., Request No. 41 ("Profit and loss statements, royalty reports, budget profit and loss statements, financial statements, and income statements concerning the mobile point-of-sale

technology (including but not limited to the manufacture and design of mobile point-of-sale technology of You, AnywhereCommerce, 4361423 Canada Inc. and/or any person doing business under the names HomeATM or HomeATM/AnywhereCommerce."); Request No. 43 ("All documents concerning BBPOS' use or sale, whether direct or indirect, of any Acknowledged Products & Portions to persons other than Ingenico, unless those documents solely concern sales of Acknowledged Products & Portions in China for use in China or in Phillipines for use in Phillipines."); Request No. 44 ("All documents concerning BBPOS' use or sale, whether direct or indirect, of any Covered Products & Portions to persons other than Ingenico, unless those documents solely concern sales of Covered Products & Portions in China for use in China or in Phillipines for use in Phillipines.")).

- b. The three-party agreement testified to by Mr. Lo (*et al.*) (*see, e.g.*, Request no. 33 ("All documents concerning any joint defense agreement or common interest agreement with or among any of the following: BBPOS, AnywhereCommerce, any entity that did or is now doing business under the names HomeATM or HomeATM/AnywhereCommerce, and 4361423 Canada Inc.")). We note that despite BBPOS's assurance that it "will produce non-privileged, non-duplicative documents that are responsive to this Request," and despite the fact that this agreement does not appear on BBPOS's privilege log, the document has not, in fact, been produced.

2. From AnywhereCommerce

- a. The three-party agreement testified to by Messrs. Cobrin and Kron (*see, e.g.*, Request no. 19 ("All documents concerning any joint defense agreement or common interest agreement with or among any of the following: BBPOS, AnywhereCommerce, any entity that did or is now doing business under the names HomeATM or HomeATM/AnywhereCommerce, and 4361423 Canada Inc.")). We note that despite AnywhereCommerce's assurance that it "will produce non-privileged, non-duplicative documents that are responsive to this Request," and despite the fact that this agreement does not appear on AnywhereCommerce's privilege log, the document has not, in fact, been produced.
- b. Docs ACPL-000544 and ACPL-000545. These documents were withheld on the grounds of attorney-client privilege and were described as "Email providing legal advice regarding pending or potential litigation." No attorneys are among the senders or recipients of either email. There is nothing from the description of the document in AnywhereCommerce's privilege log to suggest that the material could possibly be an attorney-client privileged communication. Because no valid basis for withholding has been asserted, the documents should be produced.
- c. The following documents, each of which is identified as a "contract" on AnywhereCommerce's privilege log but the basis for withholding is attorney-client privilege. There are no communications asserted in connection with any of these contracts (and therefore no attorney-client communications), and the descriptions of them (*e.g.*, "Contract providing confidential information necessary to render legal advice regarding distribution") appear to be mere formulaic invocations. Because no further information is provided, such as even the parties to these contracts, there is no basis upon which to conclude that the contract itself is "confidential." As you know, even if the contracts were relayed to attorneys (which is not indicated on the privilege log), merely relaying a contract to an attorney does not render the underlying contract privileged.
 - i. ACPL-000559
 - ii. ACPL-000560
 - iii. ACPL-000561
 - iv. ACPL-000562
 - v. ACPL-000563
 - vi. ACPL-000564
 - vii. ACPL-000565
 - viii. ACPL-000566
 - ix. ACPL-000567
 - x. ACPL-000568
 - xi. ACPL-000569
 - xii. ACPL-000570

If we are mistaken and any of these materials have previously been produced (e.g., if BBPOS has produced sales information for periods after 2015), please direct my attention to the appropriate Bates number.

In light of the upcoming close of discovery, I ask that you respond today with respect to whether the requested materials will be produced in order to avoid needless motion practice. If you wish to discuss these requests, please let me know.

Very truly yours,

Jeff Techentin

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Thank you.